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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

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O R D E R

Sunil Kumar & Ors VS. Vinod Kumar & Anr.

S.B. CIVIL WRIT PETITION NO.3610/2004 UNDER
ARTICLE 226 AND 227 OF THE CONSTITUTION OF
INDIA.

DATE OF JUDGMENT : 25th April, 2005

PRESENT

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr.Harsh Mehta]
Mr.Suresh Shrimali], for the petitioners.
Mr.Rajesh Choudhary]
Mr.D.R.Bhandari, for the respondents.

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BY THE COURT:

Heard learned counsel for the parties.

The petitioner is aggrieved against the order of the trial court dated 27th July, 2004 by which the trial court rejected the petitioners' application Annex.2 dated 13th July, 2004 in which petitioners-defendants prayed that all references about the will

of deceased Ratanlal Aggarwal in the eviction petition and in the affidavits of plaintiff and in the affidavits of Ganeshlal and Ramesh Aggarwal may be deleted as such references are not admissible in evidence.

Brief facts of the case are that according to petitioners-defendants-tenants, the plaintiff-respondent Vinod Kumar has filed a petition for eviction under the provisions of Rajasthan Rent Control Act, 2001 (for short the Act of 2001) with a foundation of claim that the suit shop was owned by Shri Ratanlal Aggarwal and he died on 4.12.85 and before that he executed a will in favour of the plaintiff-non-petitioner, therefore, the non-petitioner-plaintiff is owner of the shop in dispute. The case of the defendants is that originally the suit shop was owned by Ratanlal Aggarwal and it was let out by him to Shri Pratapmal. Partapmal entered into contract of partnership and thereby that partnership firm became the tenant of Ratanlal Aggarwal after the death of Ratanlal Aggarwal. The property devolved upon all the legal heirs of deceased Ratanlal Aggarwal, who are his widow Smt. Prem Bai, his four sons Pushkarlal, Jagdish, Vinod Kumar, Suresh and upon his four daughters Smt. Kalla, Pushpa, Savita and

Ranjana. According to petitioners-defendants, the plaintiff Vinod Kumar alone is not the sole owner of the shop in dispute.

According to learned counsel for the petitioners-defendants the will or any reference of will of said Ratanlal Aggarwal is inadmissible in evidence on two counts, one is that the will is suspicious and second is that the claim on the basis of said will of Ratanlal Aggarwal is rejected in earlier proceedings between the parties in a suit for eviction filed by Ratanlal Aggarwal himself wherein the said will was sought to be made a foundation for claiming eviction against the defendants-tenants-petitioners and this Court also in earlier proceedings in the civil suit for eviction in revision petition arising out of order passed by the appellate court found the will suspicious. According to learned counsel for the petitioners, the petitioners by taking help of amendment of law and enactment of new Act of 2001, though has been given a liberty to withdraw the suit even from appellate court to file the fresh suit, but that does not mean that all the orders, which have been passed against the plaintiff by competent court of law stand quashed and set aside or can be nullified by the unilateral act of the plaintiff.

Therefore, according to learned counsel for the petitioners in view of the orders passed by the competent court of law including by this Court between the parties, any reference about the alleged will of Ratanlal Aggarwal and claim on the basis of said will in present litigation is inadmissible in evidence.

According to learned counsel for the petitioners, the language use in Section 32(3)(a) of the Act of 2001 unambiguously provides for granting permission to file fresh suit before the Rent Tribunal after withdrawing the suit, may it be, at appellate stage, but that does not mean that the liberty has been given to the plaintiff to withdraw the suit and change the very foundation of the suit and nullify all the orders passed by the court and take a plea which was specifically denied by the court to the plaintiff. According to learned counsel for the petitioners the word 'subject matter' cannot be read to mean property, but it means the cause of action. Therefore, the landlord after withdrawal of the suit, after getting permission of the court under Section 32(3)(a) of the Act of 2001 can be filed the suit only on the basis of the cause of action, which as in the earlier filed suit, was the cause of action.

Learned counsel for the petitioners relied upon few judgments in support of his arguments that all the facts pleaded in earlier plaint constituted the cause of action and the fresh petition before the Rent Tribunal can be filed only on the basis of the facts mentioned in the earlier suit.

Learned counsel for the respondents-plaintiff raised serious objection about the maintainability of the writ petition. According to non-petitioner no.1-landlord, the trial court had not decided any of the issue either of fact or of law and held that objection raised by the petitioners will be considered later on and it is not necessary to examine the objection of the petitioners at this stage. Therefore, there is no reason for petitioners to prefer present writ petition. It is also submitted that the order has been passed by the court below well within its jurisdiction and particularly, in view of the fact that tribunal has been established for deciding the particular nature of the cases expeditiously and has been given liberty to prescribe their own procedure and if the court has prescribed its procedure, this Court may not interfere in such procedural matter by invoking extra ordinary and supervisory jurisdiction under Article 227 of the Constitution of India as neither

there is lack of jurisdiction nor according to learned counsel for the respondents there is illegality in exercise of jurisdiction. It is also submitted that the permission granted under Section 32(3)(a) of the Act of 2001 is not a permission granted by the court under Order 7 Rule 10 CPC for returning of the plaint where the parties required to obtain the original plaint from the court and submit in the court of proper jurisdiction. It is also submitted that the permission under Section 32 (3)(a) of the Act of 2001 cannot be treated to be at par with the order passed under Order 23 of the CPC granting permission to withdraw the suit with liberty to file fresh suit. According to learned counsel for the respondents the said Act has provided specific provision for permitting plaintiff to withdraw the suit from the trial court or from the appellate court or even from the second appellate court for the purpose of filing fresh suit before the Rent Tribunal. According to learned counsel for the respondents if all orders passed in earlier suit are to remain as it is then no purpose can be served by Section 32(3)(a) of the Act of 2001. It is submitted that till a matter is sub-judiced, none of the orders can be said to have attained finality and when the specific Act specifically provides and permits plaintiff to

withdraw the suit then it cannot be said that, that permission to withdraw the suit will carry with all the orders passed against the plaintiff. According to learned counsel for the respondents, it will result into totally unworkable situation. For example, in case, the evidence of the plaintiff is closed by the trial court and that finding has been upheld by the first appellate court and that finding is under challenge before this Court and at this stage, the plaintiff seeks permission under Section 32(3)(a) of the Act of 2001 and withdraw the suit for the purpose of filing petition under the provisions of the Act of 2001 then can it be said that the plaintiff's evidence will remain closed before the Rent Tribunal. It is also submitted that even if an application under Order 41 Rule 27 CPC is dismissed by the first appellate court and revision petition is dismissed by this Court against the said order even then whether it can be said that the order passed by this Court during the pendency of the appeal shall remain binding upon the parties and the plaintiff shall have no liberty to keep the issue alive after the decision of the first appellate court so as to challenge the order of the High Court before the Hon'ble Apex Court. Very many other examples were given to demonstrate that all the findings recorded by the court, may it be

High Court, have not attained finality in view of the permission granted by the court to withdraw the eviction suit and permission granted by the court to file fresh petition before the Rent Tribunal.

I considered the submissions of learned counsel for the parties. At the outset it can be said that serious debatable questions of laws have been raised by the parties in this writ petition, but they are not relevant for the purpose of examining the order dated 27th July, 2004 (Annex.10) because of the simple reason that the tribunal which has jurisdiction to decide all those questions of laws, had not decided any of the question of law and specifically ordered that the objection raised by the petitioners-defendants-tenants will be examined at the time of final decision of eviction petition. Learned counsel for the petitioners failed to establish any reason for interference by this Court in such a matter by usurping jurisdiction of the civil court itself to decide the question of law which falls within that court's jurisdiction. The questions as referred above clearly reveal that all those questions can be decided only when full facts are placed before the court trying the suit and looking to the nature of the proceedings taken under the provisions of the Act of 2001, I do not think

that the petitioners can be prejudiced if the objection of the petitioners about the will and its effect are deferred for decision. This is not a fit case where the objection raised by the respondent can be rejected summarily on the point of law.

In view of the above, the writ petition of the petitioners is dismissed.

(PRAKASH TATIA), J.

c.p.goyal/-